

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REGINALD T. LEWIS,) No. C 08-3619 SBA (PR)
Plaintiff,) **ORDER OF DISMISSAL**
v.)
CALIFORNIA DEPARTMENT OF)
CORRECTIONS,)
Defendant.)

REGINALD T. LEWIS,) No. C 08-4363 SBA (PR)
Plaintiff,) **ORDER OF DISMISSAL**
v.)
CALIFORNIA DEPARTMENT OF)
CORRECTIONS,)
Defendant.)

Plaintiff, a state prisoner and frequent litigant in this Court, has filed two pro se civil rights complaints pursuant to 42 U.S.C. § 1983. He also seeks to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 in each case.

On April 26, 1996, the Prison Litigation Reform Act of 1995 (PLRA) was enacted and became effective. The PLRA provides that a prisoner may not bring a civil action or appeal a civil judgment in forma pauperis "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The only exception to this bar is when a plaintiff is under imminent danger of serious physical injury. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001) (en banc); Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th Cir. 1999); Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998); Banos v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998).

1 In an Order dated October 20, 2008, the Court sua sponte raised the § 1915(g) problem in the
2 instant cases and notified Plaintiff of the earlier dismissals it considered to support a § 1915(g)
3 dismissal. See Andrews v. King, 398 F.3d 1113, 1120-21 (9th Cir. 2005) (allowing the plaintiff an
4 opportunity to be heard on the matter before dismissing the action under § 1915(g)). The Court
5 determined that Plaintiff has had three prior prisoner actions dismissed on the grounds that they were
6 frivolous, malicious, or failed to state a claim upon which relief may be granted. See, e.g., (1) Lewis
7 v. Santa Clara Bd. of Supervisors, No. C 01-2485 SBA (PR) (N.D. Cal. Jan. 17, 2006) (civil rights
8 action dismissed for failure to state a claim); (2) Lewis v. Santa Clara Bd. of Supervisors, No. C 02-
9 3373 SBA (PR) (N.D. Cal. Aug. 13, 2002) (civil rights complaint dismissed as duplicative); and
10 (3) Lewis v. CDC, No. C 02-3499 SBA (PR) (N.D. Cal. Aug. 13, 2002) (same). Because Plaintiff
11 has had three prior dismissals and is not under imminent danger of serious physical injury, the Court
12 ordered Plaintiff to show cause why the three aforementioned dismissals should not be counted as
13 "strikes" to support a § 1915(g) dismissal. The Court informed Plaintiff that if he failed to file a
14 response to the order to show cause within thirty days, this action would be dismissed without
15 prejudice.

16 More than thirty days have passed, and Plaintiff has not responded to the Court's October 20,
17 2008 Order in both cases.¹ Accordingly, these two actions are hereby DISMISSED without prejudice
18 to Plaintiff's refiling his claims in future actions in which he pays the full filing fee. Plaintiff's
19 applications for in forma pauperis status in both cases are DENIED.

20 The Court has rendered its final decision on these matters; therefore, this Order
21 TERMINATES Plaintiff's two cases. The Clerk of the Court shall terminate all pending motions and
22 close the files.

23 IT IS SO ORDERED.

24 DATED: 11/21/08


SAUNDRA BROWN ARMSTRONG
United States District Judge

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28 ¹ In Case No. C 08-4363 SBA (PR), after the October 20, 2008 Order was issued, Plaintiff filed
copies of his certificate of funds and prisoner trust account statement as well as a document entitled,
"Request for Trial." Plaintiff's filings cannot be considered responses to the Court's October 20, 2008
Order because they fail to address how § 1915(g) does not apply.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 REGINALD T. LEWIS,

5 Plaintiff,

6 v.

7 CALIFORNIA DEPARTMENT OF
8 CORRECTIONS et al,

9 Defendant.
_____/

Case Number: CV08-03619 SBA

CERTIFICATE OF SERVICE

10
11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on November 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
16 in the Clerk's office.

17 Reginald T. Lewis P95159
18 California State Prison - San Quentin
19 San Quentin, CA 94964

20 Dated: November 21, 2008

21 Richard W. Wieking, Clerk
22 By: LISA R CLARK, Deputy Clerk
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